

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

CARRIE M. LEO,

Plaintiff,

v.

NEW YORK STATE DEPT. OF ENVIRONMENTAL
CONSERVATION, et al.

Defendants.

DECLARATION OF
KATHRYN L. SMITH

Case No. 20-CV-7039 FPG

1. I am the Assistant United States Attorney to whom responsibility for this matter has been assigned and, as such, I am familiar with the relevant facts.

2. This declaration based upon information and belief is made in support of Defendant's Motion to Dismiss under Rule 12(b)(5) and 12(b)(6) of the Federal Rules of Civil Procedure.

3. On December 4, 2020, *pro se* Plaintiff Carrie M. Leo filed a Complaint alleging violations to her rights under the U.S. Constitution pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

4. In her Complaint, Plaintiff named as defendants, *inter alia*, federal officials Sonny Purdue, former Secretary of Agriculture, U.S. Department of Agriculture ("USDA"), and Andrea D'Ambrosio, an Animal Care Inspector ("ACI") employed by the Animal and Plant Inspection Service of the USDA.

5. Former Secretary Purdue and ACI D'Ambrosio are sued in their individual and, according to the Plaintiff's Complaint, also in their official capacities.

6. Upon information and belief, former Secretary Purdue and ACI D'Ambrosio have not received service of the Summons and Complaint in this matter.

7. On April 16, 2021, as a courtesy, I sent Plaintiff correspondence setting out the service requirements under Rule 4 of the Federal Rules of Civil Procedure for serving a federal official sued in his or her individual capacity. A true and accurate copy of my Correspondence to Carrie M. Leo dated April 16, 2021, is attached to this Declaration at Exhibit 1.

8. At the close of the April 16 letter, I invited Ms. Leo to contact me if she had questions about the content of the letter. Ms. Leo did not contact me.

9. Upon information and belief, USDA initiated administrative proceedings regarding Plaintiff's license issued by USDA pursuant to the Animal Welfare Act ("AWA"). The administrative complaint alleged, *inter alia*, that Plaintiff:

pled guilty to two violations of the State law of New York pertaining to the welfare and ownership of animals, and maintaining accurate records involving animals. The Respondent's state LCPEE license has been revoked, based in part, on the two violations of State law pertaining to animals and maintaining accurate records involving animals. The Respondent's actions render her unfit to hold an AWA license as she: 1. would be operating in violation or circumvention of State or local laws; 2. has been found to have violated State or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals; and 3. has refused to provide APHIS officials access for inspection. The Administrator has determined that the Respondent's continuous possession of an AWA license would be contrary to the purposes of the Act, and that said license should be terminated.

10. On September 8, 2020, Chief Administrative Law Judge Channing D. Strother Issued a Decision and Order terminating Plaintiff's AWA license 21-C-0435. A

true and accurate copy of ALJ Strother's Decision and Order is attached to this Declaration at Exhibit 2.

11. Upon information and belief, on November 10, 2020, Plaintiff filed a administrative Petition for Review of ALJ Strother's Decision and Order.

12. Upon information and belief, on February 26, 2020, Judicial Officer John Walker issued an Order Denying Plaintiff's administrative appeal because it was filed out of time.

DATED: Rochester, New York,
August 26, 2021

JAMES P. KENNEDY, JR.
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